this provision are to be defrayed by a special tax on property and a surtax on incomes. The constitutionality of the act is assailed upon the ground that the taxation provided for is for a purpose not public. *Held,* the purpose of the tax is public, despite the abandonment of the volunteer system for raising troops and the resort to compulsory draft. *State ex rel. Atwood* v. *Johnson* (Wis., 1920), 176 N. W. 224.

For a discussion of the constitutionality of this question and the similar question involved in the Soldiers' Bonus Law, see 18 MICH. L. REV. 535, and the cases there noted. See also *State ex rel. State Reclamation Board* v. *Clausen,* (Wash., 1920) 188 Pac. 538.

CONSTITUTIONAL LAW—VALIDITY OF EIGHTEENTH AMENDMENT.—Petitioner was in custody charged with violation of a provision of the National Prohibition Act of October 28, 1919, c. 85, which by the terms thereof was not to be in force until the date when the Eighteenth Amendment should go into effect. The offense charged was alleged to have been committed January 17, 1920. In habeas corpus petitioner claimed release because (1) the Eighteenth Amendment was not in force on date of alleged offense, since the Secretary of State's proclamation was not issued until January 29, 1919, and (2) the amendment was and is no part of the Constitution. *Held,* (1) the amendment became operative when the thirty-sixth state ratified, not when the Secretary of State promulgated same; (2) the amendment is constitutional and effective. *Ex parte Dillon* (D. C., N. D. Cal., 1st Div., 1920), 262 Fed. 563.

In this case Judge Rudkin very shortly disposes of some of the contentions that have been so frequently advanced against the validity of the Prohibition Amendment. As to one phase, see *supra,* note to *Hawke* v. *Smith.* In the principal case it was argued that an "amendment" "implies such an addition or change within the lines of the original instrument as will effect an improvement or better carry out the purpose for which it was framed." Citing *Livermore* v. *Waite,* 102 Cal. 118. The court says the Thirteenth Amendment abolishing slavery would have been invalid on such test, yet it had never been seriously challenged. On the scope of the power of amendment, see the article by George D. Skinner in 18 MICH. L. REV. 213. See also 33 HARV. L. REV. 223; *Ibid,* 659; 90 CENT. L. J. 229. It was further contended in the principal case that the seven-year limitation upon the period during which the proposed amendment might be ratified made the whole submission nugatory. This, too, was rejected. If the thirty-sixth state had voted ratification *after* the seven years had gone by, a really nice question might have arisen. No one would now contend that an illegal condition subsequent or void attempt to cut off an estate granted (see such cases as *Brattle Square Church* v. *Grant,* 3 Gray, 142) would make ineffective the whole grant. Yet that is what the contention here amounts to. Of course, it is unsafe to argue questions of constitutional law and construction on the basis of decisions in such a field as the law of estates, but if the illegal, added provision in the grant of an estate has no effect upon the validity of

the main grant, it would seem, *a fortiori*, to be true that, even though such a limitation as the one in the submission of the Eighteenth Amendment is void, the whole submission does not fall therewith.

COURTS—PENDENCY OF ANOTHER ACTION—ABATEMENT AND REVIVAL.—Plaintiff brought an action in the county court for injuries to his automobile, sustained in a collision with the defendant's automobile. Defendant later sued plaintiff in the municipal court for damages sustained in the same collision, and judgment for defendant was rendered in the suit in the municipal court. Plaintiff filed a bill to restrain the further prosecution of the suit in the municipal court on the ground that the county court had acquired jurisdiction first. *Held*, the two suits not being for the same cause of action, the bill should be dismissed. *Gilley* v. *Jarvis* (Vt., 1920), 109 Atl. 41.

The view taken by the court in this case is undoubtedly correct. For a discussion of this question and contrary decisions, see *supra*, 18 MICH. L. REV. 421.

DAMAGES—BREACH OF COVENANT OF SEISIN.—The grantee of land entered into a contract for the sale of it; the purchaser from the grantee repudiated the contract and obtained judgment for an advance payment and costs on the ground that the title was not marketable. The grantors of the land were notified, but refeused to defend the suit. In an action against the grantor for breach of the covenant of seisin it was *held* that the grantors are liable to the grantee for the difference between the total purchase price and the value of the portion of the land to which they had title with interest. As the suit with the purchaser was not in defense of the title, no damages could be recovered in respect to it. *Hilliker* v. *Rueger* (New York, 1920), 126 N. E. Rep. 266.

The rule in England for failure to convey realty is to allow nominal damages merely. *Flureau* v. *Thornhill*, 2 W. B. 1078; *Bain* v. *Fothergill*, 7 H. L. Cas. 158. But in the United States the rule is generally the difference between the value of the realty at the time of conveyance and the contract price. *Hopkins* v. *Lee*, 6 Wheat. 109; *Doherty* v. *Dolin*, 65 Me. 87; *Plummer* v. *Regdon*, 78 Ill. 222. *Contra*, see *Hammond* v. *Hannen*, 21 Mich. 374; *Burk* v. *Scrull*, 80 Pa. 413; *Pumpelly* v. *Phelps;* 40 N. Y. 59; *Margraf* v. *Muir*, 57 N. Y. 155. On general principles, the measure of damages would be fixed by the bargain—*i. e.*, in case of eviction the value of the property lost. Under a covenant of seisin the value would be taken at the time of the conveyance, for it is then the breach occurs. Under the covenant of quiet enjoyment and warranty the value would be taken at the time of actual eviction. But owing to the extreme hardship which would result to a remote grantor the rule has been adopted that in breach of covenants of seisin and warranty the damages are the consideration paid, with interest and reasonable costs of defending the title. *Staats* v. *Ten Eycks* (N. Y.), 3 Cain. 111; *Pitcher* v. *Lewingston* (N. Y.), 4 Johns. 1. See cases cited in TIFFANY ON REAL PROPERTY, Chap. XIX, note 301. Under the ancient *warrantia chartae* the value of the land at the time of conveyance, rather than the consideration paid, was recovered. In a few states the covenant of warranty is consid-